

# **Sales Tax Guidelines**

for  
Public and Private  
Elementary and  
Secondary Schools



## Definitions

### Sales Tax

Sales tax is a tax on the rental or retail sale of tangible personal property, admissions and users fees, and certain services performed within Utah. The sales tax is collected from the purchaser and it is remitted by the vendor (or seller) to the Utah State Tax Commission ("Tax Commission") on monthly, quarterly or annual tax returns.

### School

A "school" is defined as a public school district, a public elementary school or secondary school, or a private school that provides instruction for one or more grades kindergarten through 12.

## Who Must Pay or Collect Sales Tax?

### Public Schools

Utah law provides for a sales tax exemption on sales or rentals *to* a public school. However, many sales or rentals *from* a public school and admissions or user fees are taxable. Exceptions are noted in this pamphlet. The school must collect tax on its taxable sales or rentals of tangible personal property to students or to the public.

To qualify as a sale made to a public school, the purchase must be made with the school's funds. A purchase does not qualify for exemption as a purchase by a school if a school employee pays for the purchase with personal funds, even if the school employee is reimbursed for the purchase by the school.

### Private Schools

Generally, sales made *to or by* a religious or charitable institution are exempt from sales tax if the sale is made in the conduct of the institution's regular functions or activities. To qualify for this exemption, a school must qualify under section 501 (c) (3) of the Internal Revenue Code, and it must obtain a sales tax exemption number from the Tax Commission.

**NOTE:** See the warning on the next page concerning the exemption exclusion for Olympic merchandise.

A vendor must collect sales tax on purchases by a qualified 501 (c) (3) private school unless the school presents the vendor with a current exemption certificate, and:

1. the purchase totals \$1,000 or more, or
2. the purchase, regardless of amount, is made pursuant to a contract between the vendor and the school, or
3. the purchase is for public utilities.

For purchases on which the vendor collects sales tax, the school may apply for a refund directly from the Tax Commission. Applications for refunds may not be submitted more frequently than once each month.

Private schools which do not qualify as 501 (c) (3) organizations are eligible for the sales tax exemptions described in this publication pertaining to fundraisers,

sales of food, educational supplies and materials, transportation and clothing as outlined in this pamphlet. Such private schools must pay sales tax on non-exempt rentals and purchases of tangible personal property (such as construction materials) and collect sales tax on non-exempt sales.

## Exemption Certificate

All eligible tax exempt purchases made by public and private schools must be supported by a completed and signed Tax Commission form TC-721, Exemption Certificate. The school's assigned sales tax number must be indicated in the space provided on the form.

## PTA

Generally, charitable organizations may purchase and sell items tax free when the transactions are made in the conduct of the organization's regular functions. The Parent Teacher Association is a charitable 501 (c) (3) organization whose purchases and sales are exempt from sales tax when made in the conduct of their charitable functions and activities serving Utah's public schools.

**NOTE:** See the warning below concerning the exemption exclusion for Olympic merchandise.

The PTA's sales tax exemption does not extend to a third party business which sells items through the PTA, even if the PTA receives some financial benefit from the sales.

## 2002 Olympics Exemption Exclusion

**WARNING:** The normal sales and use tax exemptions for qualified religious and charitable institutions do not apply to sales or purchases of "Olympic Merchandise" (such as items containing or displaying Olympic symbols, logos, emblems, etc.). Religious and charitable institutions selling such merchandise must obtain a regular sales tax license to collect and report the tax on sales of these types of items. Religious and charitable organizations that purchase such merchandise for their own use must pay sales tax on those items at the time of purchase.

Additionally, restrictions have been placed on the religious and charitable institution exemption for certain sales of admissions, motel/hotel accommodations, and rentals of vehicles in connection with the 2002 Olympics.

For more detailed information on the exemption exclusions, see Tax Bulletin 8-98.

## Tax Rate

The sales tax rate is based on the place of business in Utah where the merchandise or service is sold (point of sale). The current statewide sales tax rate is combined with any additional local sales taxes imposed by cities and counties. Therefore, the sales tax rate may vary from one community to the next. Contact the Tax Commission for information about the sales tax rate that applies to your school or organization.

## Sales Tax License

All vendors who are required to collect sales tax must have a sales tax license issued by the Tax Commission. The Tax Commission recommends that a school district obtain the tax license and report all sales by schools within the district. However, each school engaging in taxable sales may obtain its own tax license.

Applications for sales tax licenses (Tax Commission form TC-69) are available from the Tax Commission. When completing an application, be sure to include the proper name of the school or school district and the name of a contact person who will be responsible for filing returns. The sales tax license information must be updated whenever a different person assumes responsibility for filing returns.

Once a license has been issued, preprinted personalized returns will be mailed approximately four weeks before the return is due. However, if returns are not received, the taxpayer is responsible for obtaining blank return forms and filing by the due date, even if no tax is due for the period.

Tax licenses are not transferable.

## Filing Requirements

Filing periods are determined by the Tax Commission. If your sales tax liability is less than \$1,000 per year, you may file tax returns annually. If your sales tax liability is up to \$50,000 per year, you may file quarterly. If your sales tax liability is more than \$50,000 per year, the Tax Commission will notify you to file monthly.

A tax return must be filed whether or not tax is due for a particular period. Tax records are subject to audit by a Tax Commission representative.

Persons other than state entities who file monthly are entitled to a vendor discount equal to 1.5 percent of the state tax and 1 percent of the local and transit district taxes. A school qualifies for the vendor discount if it has a sales tax number and its annual tax liability is greater than \$50,000. A worksheet for calculating the vendor discount is provided with the return.

## Penalties

The penalty for **failure to file a tax due return** by the due date is the greater of \$20 or 10 percent of the unpaid tax. Additionally, a second penalty, the greater of \$20 or 10 percent of the tax balance will be charged if a tax balance remains unpaid 90 days after the due date. The penalty for **failure to pay timely** as reported on a timely filed return or within 30 days of a notice of deficiency is the greater of \$20 or 10 percent of the tax due.

If returns are filed late or if taxes are not paid in full when due, the vendor discount described above will not apply.

## What's Taxable and What's Not

The following is an explanation of the typical taxable transactions carried on between the school and students or the public. The list does not include all transactions. It is illustrative only. If you have questions about a transaction which is not described in this publication, contact the Tax Commission for clarification.

## Taxable Transactions

These types of transactions are subject to sales tax:

- Sales of **yearbooks, student directories, atlases, day planners, spirit packs**, are examples of taxable sales. Generally, all sales made from the school bookstore or office are taxable except sales of textbooks, laboratory supplies or other supplies for required school projects, safety equipment, and items of clothing that a student is required to wear as a condition of participation in a school event. If clothing is required as a condition of participation in a school event, and it is specifically detailed (like a uniform) and it cannot readily take the place of ordinary clothing, it is not subject to sales tax. Generally, if the charge for clothing or equipment is waivable under state fee waiver rules, it is exempt.
- Sales from **concessions stands**.
- **Admissions to athletic events, school dances, school plays** or other school-related activities, under the following conditions: 1) Amounts paid or charged by the school for admission to a school-related activity that are passed through to a person other than a school or a nonprofit organization or association authorized by a school board or governing body of a private school to organize and direct a competitive secondary school activity. 2) Amounts paid or charged that are passed through to a person who is required to collect sales use tax under current law.
- **Admissions to swimming pools** and charges to the public for **rentals of towels, equipment or lockers** (if the lockers are tangible personal property). However, charges for **swimming or diving lessons** are *not* subject to tax.
- **Vending machine** sales by private vendors. If the vending machine is operated by an outside vendor who pays the school a commission or fee for the privilege of placing the machine in the school, that vendor is responsible for reporting and remitting the tax on the vending machine sales.
- Charges for **school pictures**. Generally, an outside photographer sells the pictures and collects payment. The photographer is responsible for collecting and remitting the sales tax on these transactions.
- **Community Education classes**. Although charges for classes or lessons are not taxable, sales of supplies or rental of school equipment are taxable transactions.
- **Book Sales from Outside Vendors**. In one situation, book vendors may furnish teachers with information about their books and sales order forms. Then, teachers distribute the order forms to students who, in turn, pay the school for the books. When the teachers collect the amounts due, the proceeds from the sales are placed into a school account. The school then places one order with the book vendor and pays the vendor from the school's funds. In this case, the school must collect sales tax from the students making purchases and remit the tax to the Tax Commission.

Alternatively, a book vendor may provide book information and order forms to the teachers. The teachers, in turn, hand the order forms out to their students. The students return checks for a stated amount to the teacher, who forwards the checks to the book vendor. In this case, the book vendor is required to remit the sales tax to the Tax Commission.

- Sales of **items prepared or produced or manufactured by the students** for sale to other students or the public. For instance, items manufactured for sale by students in a junior achievement program or a special class are taxable. The raw materials used as component parts or ingredients of the final taxable product may be purchased by the student or student sponsor tax free. However, use of the exemption requires the purchaser to obtain a sales tax license and to file sales tax returns.

## Non-Taxable Transactions

These types of transactions are not taxable except as noted:

- Sales of **textbooks**, textbook rental fees, laboratory fees, **laboratory supplies**, and other **educational supplies** sold to students by the school for use in classes or class projects.
- Charges for use of the school's **copy machine** by students where the copies are for use in classes or class projects.
- Sales of school uniforms required by private or parochial schools are exempt if the uniforms are sold by the schools. Uniforms purchased directly from an outside vendor are subject to sales tax.
- **Admissions to athletic events, school dances, school plays** or other school related activities, if amounts paid or charged by the school for admission to a school-related activity are passed through to a school or a nonprofit organization or association authorized by a school board or governing body of a private school to organize and direct a competitive secondary school activity.
- **Participation or sign up fees for drill team, cheerleading, band, athletics and other student activities.** However, if the fee covers the student's purchase or rental of non-exempt clothing or equipment, those sales and rentals are subject to sales tax. Sales or rentals of **safety equipment, fees to recondition safety equipment**, or sales of **clothing** that a student is specifically required to wear as a condition of participation in a school-related event or activity and that is not readily adaptable to general or continued use to replace ordinary clothing are exempt. As a rule of thumb, if the fee for clothing and equipment is waivable under state fee waiver rules, it is exempt. In cases where the fee covers both non-taxable participation fees and taxable (non-waivable) sales or rentals, the taxable portions of the fees must be separately stated and taxed or the entire amount is subject to tax.
- Transportation charges for official school activities.
- Fees charged to students to participate in **athletic clinics** or **cheerleading clinics**.
- **Fines** charged for overdue library books.
- Charges for **advertisements in school publications**.
- Charges to parents for use of the school-operated **nursery school**. (These nursery school programs are taught by high school students under the supervision of a faculty member.)
- Charges for **parking permits** and **class change fees**.

- Qualified **fundraising sales**. Sales made by public or private elementary or secondary schools, or made by a public or private elementary or secondary school student in grades K-12 are exempt if the purpose of raising funds for the school is to purchase equipment or materials or to provide transportation. To qualify for the exemption, the activity must meet the following conditions:

The activity must be a part of an officially sanctioned school activity that is conducted in accordance with a formal policy adopted by the school or district governing the authorization and supervision of fundraising activities.

The funds may not be used to directly or indirectly compensate an individual teacher or other personnel by direct payment, commission, or payment in kind.

The net or gross revenues from the fundraiser must be deposited in a dedicated account which is controlled by the school or district.

Admissions to athletic events or concerts do not fit within the fundraiser exemption. However, if a charge for **reserved seats at a sporting event** is separate from the gate receipts and is structured to fall within the fundraising guidelines outlined above, it does qualify for the fundraising exemption.

- The sale of **coupon books** or **Happenings books** by students or school organizations.
- Sales of **food** served by *public* and private elementary and secondary schools, if the net or gross revenues generated by the food sales are deposited into a school district fund or school fund that is dedicated to school meals. Sales of meals served by qualified *religious or charitable institutions* and *institutions of higher education* are exempt from tax if the meals are not available to the general public.
- Food sales by the school from vending machines owned or leased and operated by the school are exempt if the net or gross proceeds from the sales are deposited into the school or district lunch or meal fund.
- Sales of **discount cards** by a school to students that enable the students to make purchases from an outside vendor at a discount are exempt. However, if the discount card is sold by the vendor offering the discount, then the sale of the card is taxable.

## Purchases of Construction Materials by Public Schools

Construction materials purchased by the school prior to December 31, 1995 are subject to sales tax unless the materials are installed or converted to real property by school employees. Beginning January 1, 1996, construction materials purchased by or on behalf of public school systems are exempt from sales tax so long as the construction materials are clearly identified and installed or converted to real property which is owned by the institution.

For construction projects that overlap the effective date of the exemption, it is important to identify the date that the sales transaction is complete. Ordinarily, the sale is complete when title passes. Title passes under terms of the contract of sale between the supplier and the school or the school's agent. If the contract does not explicitly state when title passes, title is generally considered to pass upon performance of the supplier's duty to ship or deliver the materials.

**This publication is provided for general guidance only. It does not contain all sales or use tax laws or rules. If you need additional information, call (801) 297-2200 or 1-800-662-4335.**

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If you need an accommodation under the Americans with Disabilities Act, contact the Tax Commission at (801) 297-3811 or TDD, Telecommunications Device for the Deaf, (801) 297-3819. Please allow three working days for a response.



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